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NO. _____

In the Supreme Court of the United States

OCTOBER TERM, 1982

DIRECTOR OF THE CALIFORNIA
STATE DEPARTMENT OF SOCIAL SERVICES,

Petitioner,

v.

GEORGINA ZAPATA, ALFRED LONG,
BAY AREA WELFARE RIGHTS ORGANIZATION,
individually and on behalf of all others
similarly situated,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Welfare and Institutions Code section 11203 and certain administrative regulations implementing the same are inconsistent with and contravene certain provisions of the Aid to Families With Dependent Children (AFDC) program, title IV-A of the Social Security Act of 1935,[1] 42 United States Code section 601 *et seq.*

[1] All section references are to title IV-A of the Social Security Act of 1935 (act) unless otherwise specified.

TOPICAL INDEX

IV.

V.

TABLE OF AUTHORITIES CITED

Regulations

Constitutions

Books

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Petitioner, Director of the California State Department of Social Services, respectfully prays that a writ of certiorari issue to review the ruling of the California Supreme Court which was an affirmance of the decision of the Court of Appeal.

OPINIONS BELOW

On November 30, 1982, Division Two of the Second Appellate District, Court of Appeal of the State of California, rendered an opinion affirming the decision of the trial court which held invalid Welfare and Institutions Code section 11203 and certain administrative regulations as inconsistent with the act. That opinion is reported at (1982) 137 Cal.App.3d 858, and a copy of the same is set forth in appendix A.

Thereafter, on January 7, 1983, petitioner filed a petition for hearing in the California State Supreme Court. The petition for hearing was denied on March 16, 1983. A copy of the order denying the hearing appears at appendix B. The remittitur under rule 25 of the California Rules of Court was issued by the California Supreme Court clerk on March 31, 1983, and a copy of the same appears at appendix C.

JURISDICTION

Petitioner invokes the jurisdiction of this court under title 28, United States Code section 1257(3), in that the challenged decision herein invalidates a California state statute on the ground that the same is repugnant to a federal law.

Further, since the order of the California Supreme Court denying the petition for hearing is an affirmance of the decision of the Court of Appeal (intermediate court), the higher court's order is the judgment reviewable under title 28, United States Code section 1257 (3). *(Norfolk Turnpike Co. v. Virginia* (1912) 225 U.S. 264.) The instant petition is filed within the required 90-day period following the March 16, 1983 order of the California Supreme Court.

Additionally, the issuance of the remittitur on March 31, 1983 under rule 25 of the California Rules of Court by the clerk of the Supreme Court as opposed to the clerk of the Court of Appeal also shows that the March 16, 1983 order of the California Supreme Court is the final state decision herein.

STATUTES INVOLVED

California Welfare and Institutions Code section 11203 states:

> "During such times as the federal government provides funds for the care of a needy relative with whom a needy child or needy children are living, aid to the child or children for any month includes aid to meet the needs of such relative, if money payments are made with respect to the child or children for that month, and if the relative is not receiving aid under Chapters 3 (commencing with Section 12000) or 5 (commencing with Section 13000) of this part or Part A of Title XVI of the Social Security Act for that month. Needy relatives under this chapter include only natural or adoptive parents, the spouse of a natural or adoptive parent, and other needy caretaker relatives."

Title 42, United States Code section 601, states as follows:

> "For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom

they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children."

STATEMENT OF THE CASE

On or about July 11, 1977, respondent Georgina Zapata applied on behalf of herself and her minor son, David E. Reyes, for benefits under the AFDC program. On or about July 19, 1977, her application was denied by the Los Angeles County Department of Public Social Services, and on July 26, 1977, she requested a fair hearing to contest said denial. The hearing was held on or about August 23, 1977, and on September 22, 1977, petitioner adopted the proposed decision of the hearing officer which sustained the denial of the application on the ground that the only child in the family unit was receiving assistance under Supplemental Security Income for Aged, Blind, and Disabled, 42 United States Code section 1381 *et seq.* (SSI), and, therefore, was not a "needy" child under the state's AFDC program. (C.T. p. 5.)

On or about July 26, 1977, Fresno County notified respondent Alfred Long that the AFDC grant that his family was receiving would be discontinued effective August 31, 1977 because his minor daughter, Marilyn Faye Long, had started to receive SSI benefits. On August 19, 1977, respondent Long filed a request for fair hearing

to contest the discontinuance of his grant which hearing was held on September 7, 1977. On or about November 1977, petitioner adopted the proposed decision of the hearing officer which sustained the discontinuance of AFDC on the ground that the only child in the family unit was receiving SSI and, therefore, was not a "needy" child under the state's AFDC program.[2] (C.T. pp. 5-6.)

Throughout all relevant times herein, California state law provided that, in order to qualify for AFDC benefits, each family unit must contain "one or more needy children qualified for aid under this chapter." Petitioner's regulations provide that a child receiving SSI is not a "needy child" under the independent state standard of need since said child is already receiving aid. Thus, if the only minor child in a family budget unit applies for and receives SSI, the parent or guardian is not entitled to benefits under the AFDC program as a "caretaker relative."[3] (C.T. p. 389.)

On January 12, 1978, respondents filed the complaint herein which challenged the aforementioned policy of petitioner relative to AFDC eligibility as violative of the supremacy clause of the United States Constitution on the ground that said state policy failed to comply with certain

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[2]The action entitled *Eunice Holmes, et al. v. Marion Woods, etc.* (L.A.C.S.C. No. CA 000548), was consolidated with this action, and the same includes two additional named respondents. (C.T. p. 260.) Said named respondents are Eunice Holmes and Selma Hoskins, and their families' AFDC benefits were affected in a manner similar to those discussed above.

[3]The term "caretaker relative" will be used throughout this brief as a shorthand expression for the "relative with whom any dependent child is living," a term of art referred to in section 406, subdivision (b) of the act, 42 United States Code section 606, subdivision (b), and defined in section 406, subdivision (c), 42 United States Code section 606, subdivision (c).

provisions of the act. (C.T. pp. 9-10.) Petitioner filed his answer denying all substantive allegations of the complaint on April 12, 1978. (C.T. p. 31.)

Respondents' initial motion to be relieved from compliance with the class action manual and for certification of the class was denied on September 28, 1978. (C.T. p. 86.) However, respondents' second motion for class certification was granted and, on or about December 11, 1979, the class was deemed certified and consisted of:

> "All persons in California who qualify under the Social Security Act as needy relatives with whom dependent children are living and who have been or will be denied AFDC benefits pursuant to Welfare and Institutions Code § 11203 and the Eligibility and Assistance Standards Provision of the Manual of Policy and Procedure § § 44-205 and 44-206, on the sole grounds that all of the dependent children in the relatives' care are receiving Supplemental Security Income."

Following the July 9, 1980 trial and subsequent arguments of counsel, the court (sitting without a jury) awarded respondents judgment. In doing so, the court issued a memorandum of intended decision which set forth the court's analysis of the central questions at issue herein. The trial court stated in said memorandum that it agreed with the "essence" of petitioner's position herein; to wit, a) eligibility for AFDC requires the two-prong showing of "dependent child" under federal law and "needy" child under state statute; and b) that the state is free to set its own standard of need. (C.T. p. 391.) The court, however, held for respondents on the ground that federal law and regulation implementing the AFDC program specifically "circumscribe the state's power to declare as not 'needy' a child receiving SSI." (C.T. pp. 392-395.)

The court granted peremptory writs of mandamus to the named respondents; declaratory and injunctive relief prospectively to the class; and retroactive benefits to the class. (C.T. pp. 413-420.)

The Court of Appeal affirmed the trial court's decision.

Thereafter, petitioner filed a petition for hearing before the California Supreme Court which was denied by order dated March 16, 1983.

REASONS FOR GRANTING THE WRIT

SUMMARY OF ARGUMENT

A hearing before this honorable court is requested upon the grounds that the decision below is in direct conflict with several decisions of this court and because the matters at issue relate to the very important question of the cooperative provision by the federal and state government of welfare programs for the needy.

The decisions of the Court of Appeal as affirmed by the California Supreme Court enjoins petitioner from enforcing certain state statutes and administrative regulations which specify that, in order to qualify for benefits under the AFDC program, each family unit must contain "one or more needy children qualified for aid under this chapter"; and that a child receiving assistance under title XVI of the act is not a "needy child." As such, the opinion of the Court of Appeal is in direct conflict with a series of decisions of this court, commencing with *King v. Smith* (1968) 392 U.S. 309, and culminating in *Burns v. Alcala* (1975) 420 U.S. 575. These cases recognize that the act contemplates a cooperative effort between the federal government and the states in administration of the AFDC program, and that the "States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the

level of benefits by the amount of funds it devotes to the program. . . . *(King v. Smith, supra,* at pp. 318-319.)

Moreover, it is clear that important questions of law are at issue herein. The AFDC program is one of the single largest state expenditures within the area of welfare and health care benefits for its poor and needy citizens in California and other states across the country. The fiscal management of this program through proper allocation of the AFDC resources is a question that is important and significant to each and every taxpayer and the individuals receiving aid under the program. The question should and must be considered by this honorable court.

ARGUMENT

I

THE STANDARD FOR REVIEW OF ELIGIBILITY UNDER THE ACT

The issue before this court is whether a certain class of individuals is eligible for benefits under the federal AFDC program as the same is implemented in the State of California. That question was before this court in *Burns v. Alcala, supra,* 420 U.S. 575. In *Burns,* this court held that no special rule of statutory construction should be employed to establish eligibility. Rather, it held that determination of eligibility mandated by section 402, subdivision (a) (10) of the act, 42 United States Code section 602, subdivision (a) (10), must begin with the definition of a dependent child in section 406, subdivision (a). With that section as a starting point,[4] this court

[4]Petitioner must emphasize at once that while a determination of eligibility under the act begins with the definition of "dependent child" under section 406, subdivision (a) of said act, it by no means ends there. As shown below, such a consideration must include an analysis of the authorizing section for the establishment of this state participating program at section 401 of the act and the requirements for such participation by a given state as set forth under section 402 of the act.

applied normal tools of statutory construction, including an analysis of the plain language of the statute, the legislative history, and a comparison of other sections of the act.

The *Burns* court rejected any rule by which persons arguably eligible for AFDC assistance were deemed eligible unless the act expressly excluded them. In other words, a presumption of coverage is not created where the statute is ambiguous.

The petitioner believes that this court should again follow the same method of analysis used in *Burns* to define the federal standard of eligibility. It submits that when that analysis is applied, the same conclusion that was reached in *Burns* will result here. Applying the analysis described above, the court in *Burns* found that neither the language of section 406 of the act nor the legislative history of the act supported the respondents' contention that unborn children are "dependent children" eligible for AFDC benefits. As a result, states receiving federal financial aid under the AFDC program were not required to offer assistance to pregnant women for their unborn children.

Likewise, in the instant action, an analysis of the act as a whole, including consideration of legislative history, will demonstrate that the above described state statutes and policy, as implemented by petitioner, is consistent and compatible with the requirements of the act.

II

THE STATE STATUTES AND POLICY UNDER CONSIDERATION HEREIN ARE CONSISTENT WITH TITLE IV-A OF THE ACT

As noted above, existing California state statutes which take into account "conditions in such State" under section 401 of the act, along with implementing regulations, deny

AFDC "caretaker relative" benefits to respondents herein since they do not reside with "dependent children" who meet the requisite standard as "needy" children under California law. (Welf. & Inst. Code, § § 11203, 11250, 11251, 11450; and Eligibility and Assistance Standard Manual (EAS) § § 44-205, 44-206.) (R.T. pp. 10-12.)

Both respondents and petitioner agree that a state plan, pursuant to section 402, subdivision (a) (10) of the act, 42 United States Code section 602, subdivision (a) (10), must:

> "[P]rovide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals; . . . "

The dispute centers on respondents' contention that the consideration of who is an "eligible individual" begins and ends with definition of "dependent child" under section 401 of the act while the petitioner takes the position that, in addition to meeting said federal definitional requirement of dependency, an individual must also be "needy" under state standards. Additionally, the "need" requirement must be considered in light of the language in the authorizing section (401) of the act which specifies that benefits are to be provided, "as far as practicable under the conditions in such State . . . ."

Indeed, the petitioner has admitted that respondents' children herein meet the federal definition of "dependent child" under section 401, subdivision (a) of the act.[5] As noted above, however, the analysis of eligibility does not

[5] See petitioner's answers to request for admissions Nos. 8 and 9 as propounded by respondents. (C.T. p. 163).

end there but rather simply begins there. Accordingly, the remaining portion of this section of the petition will demonstrate that: a) In order to establish eligibility under the act, an individual must demonstrate that he is a "needy" child under state standards in addition to showing that he is a "dependent child" under section 401, subdivision (a) of the act; b) a state is given wide latitude in setting its own standard of "need"; and c) the California statutes and policy which provide that a child receiving SSI benefits is not a "needy" child under such state standards is therefore consistent with the act, particularly in light of the fact that benefits generally under the program are provided only so far as the same is "practicable under the conditions existing in such State."

A. In Order to Establish Eligibility Under the Act, an Individual, in Addition to Meeting the Federal Definition of "Dependent Child" Under Section 401 of the Act, Must Also Show That He Is "Needy" Under State Standards

It must initially be noted that, while the eligibility requirement of being a "dependent child" is explicitly set forth in the act at section 402, subdivision (2) (10), and section 406, subdivision (a), the same is not true with respect to the "needy" under state standards requirement. However, an analysis of several sections in the act leads inescapably to this conclusion particularly when buttressed by United States Supreme Court decisions which will be set forth subsequently.

Initially, section 402, subdivision (a) (7) of the act, 42 United States Code section 602, subdivision (a) (7), states:

> "[E]xcept as may be otherwise provided in clause (8), provide that the State agency shall, in *determining need*, take into consideration any

> other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered *in determining the need* of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; . . . ." (Emphases added.)

Since the act contains no separate requirement of establishing "need" at the federal level independent of the "dependent child" requirement in section 406, subdivision (a), it must be concluded that the reference to "determining need" in the above section relates to a separate showing of need under state standards.

Additionally, section 401, subdivisions (a) (8), (a) (14), and (a) (15) (42 U.S.C., § 601, subds. (a) (8), (a) (14), and (a) (15)) all make references to determination of need by the state agency. Again, since no determination of need independent of the "dependent child" requirement is provided for under the act, the references to the same in the aforementioned sections must be read to relate a separate showing of "need" under the state program.

That a separate state finding of "needy" is interwoven into the determination of eligibility is not unusual in light of the fact that the entire act contemplates a cooperative effort between the federal government and the states. (§ 401 of the act, 42 U.S.C., § 601.) Indeed, in describing the program established by the act, this court in *King v. Smith, supra,* 392 U.S. 309, at page 316, stated:

> *"The AFDC program is based on a scheme of cooperative federalism.* [Citation omitted.] It is financed largely by the Federal Government, on a matching fund basis, and is administered by

> the States. States are not required to participate in the program, but those which desire to take advantage of the substantial federal funds available for distribution to needy children are required to submit an AFDC plan for the approval of the Security of Health, Education, and Welfare (HEW). [Citations omitted.] The plan must conform with several requirements of the Social Security Act and with rules and regulations promulgated by HEW. [Citations omitted.]" (Emphasis added.)

Finally, that there is a separate requirement of "needy" under state standards to establish eligibility under the act was made crystal clear in *Burns v. Alcala, supra,* 420 U.S. 575. The *Burns'* decision was the latest case in a series of cases commencing with *King v. Smith, supra,* wherein this court considered and clarified the role states play in the administration of the AFDC program established by the act. In preparation of its analysis of the issue before it in *Burns, supra,*[6] this court summarized the holdings it had fashioned through earlier decisions and made a concise statement of the rule as of 1975. At page 578, the court stated:

> "The Court has held that under § 402(a)(10) of the Social Security Act, 42 U.S.C. § 602(a)(10), federal participation in state AFDC programs is conditioned on the State's offering benefits to all persons who are eligible under federal standards. The State must provide benefits to all individuals who meet the federal definition of 'dependent child' *and who are 'needy' under state standards,* unless they are excluded or aid

[6]I.e., whether unborn children come within the definition of "dependent child" under section 406, subdivision (a) of the act, 42 United States Code section 606, subdivision (a).

> is made optional by another provision of the Act. *New York Dept. of Social Services v. Dublino,* 413 U.S. 405, 421-422 (1973); *Carleson v. Remillard,* 406 U.S. 598 (1972); *Townsend v. Swank,* 404 U.S. 282 (1971); *King v. Smith,* 392 U.S. 309 (1968). . . ." (Emphasis added.)

Accordingly, this court has specifically held that eligibility under the act requires that an individual meet the federal definition of "dependent child" and, additionally, be "needy" under state standards.

The clear statement of the *Burns* decision also makes it clear that respondents cannot argue that the federal definition of "dependent child" includes the finding of "needy" under state standards. Respondents might attempt this argument since, in defining "dependent child," section 406, subdivision (a) of the act, states:

"When used in this part—

> "(a) *The term 'dependent child' means a needy child* (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives in his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment; . . . ." (42 U.S.C., § 606, subd. (a), emphasis added.)

Since this court in *Burns*, at page 578, sets forth this definition of "dependent child" immediately below its statement of the rule regarding eligibility under the act, it obviously was aware that said definition began with the statement, " 'The term "dependent child" means a needy child . . . .' " Nevertheless, the court specifically stated that eligibility under the act requires that an individual meet the federal definition of "dependent child" *and* be "needy" under state standards.

Accordingly, it is without question that California's above described statutes and policy of requiring that "caretaker relatives" reside with a "dependent child," who is also a "needy" child under California state standards, is consistent with the act.

B. A State is Given Wide Latitude in Setting Its Own Standard of Need

That a state is given wide latitude in setting its own standard of "need" under the act is not subject to serious dispute. In *King v. Smith, supra*, 392 U.S. 309, this court invalidated an Alabama statute which in effect held that a child was not a "dependent child" under the act when the mother "cohabits" with an able-bodied man. However, on the issue of a state establishing its own standard of "needy," this court at pages 318-319 stated:

> "We think it well to note at the outset what is *not* involved in this case. There is no question that States have considerable latitude in allocating their AFDC resources, *since each State is free to set its own standard of need*[14] [emphasis ours] and to determine the level of benefits by the amount of funds it devotes to the program. . . ."

Additionally, at said footnote 14, the court stated:

> "HEW's Handbook, in pt. IV, § 3120, provides that: 'A needy individual . . . [under AFDC] [insertion theirs] is one who does not have income and resources sufficient to assure economic security, *the standard of which must be defined by each State.* The act recognizes that *the standard so defined depends upon the conditions existing in each State.*' (Emphasis added.) The legislative history of the Act also makes clear that the States have power to determine who is 'needy' for purposes of AFDC. Thus the Reports of the House Ways and Means Committee and Senate Finance Committee make clear that the States are free to impose eligibility requirements as to 'means.' H.R. Rep. No. 615, 74th Cong., 1st Sess., 24 (1935); S. Rep. No. 628, 74th Cong., 1st Sess., 36 (1935). The floor debates corroborate that this was Congress' intent. For example, Representative Vinson explained that 'need is to be determined under the State law.' 79 Cong. Rec. 5471 (1935)." (Pp. 318-319.)

Moreover, approximately one year hence, this court reiterated its holding in *King, supra,* with its ruling in *Dandridge v. Williams* (1970) 397 U.S. 471. At page 478, it stated:

> "In *King v. Smith, supra,* we stressed the States' 'undisputed power,' under these provisions of the Social Security Act, 'to set the level of benefits and the standard of need.' *Id.,* at 334. We described the AFDC enterprise as 'a scheme of cooperative federalism,' *id.,* at 316, and noted carefully that '[t]here is no question that States have considerable latitude in allocating

> their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program.' *Id.*, at 318-319."

Accordingly, there is no question but that a state is in fact given wide latitude in setting its own standard of "need" pursuant to the act. This fact, as clearly established by this court, is consistent with and supportive of the previous contention demonstrated by petitioner that, establishing eligibility under the act, requires than an individual meet the federal definition of "dependent child" *and* be a "needy" child under state standards. The point is that there would be no necessity to allow "each" state to set its own standard of "need" if the issue of eligibility under the act ended with the federal definition of "dependent child" under section 406, subdivision (a) of the act, 42 United States Code section 606, subdivision (a).

Thus, the foregoing sections "A" and "B" together establish that "needy" under state standards is a prerequisite to eligibility under the act and that a state is given wide latitude in establishing its standard of "need."

C. The California Statutes and Policy Which Provide That a Child Receiving SSI Benefits Is Not a "Needy" Child Under Such State Standards Is Consistent With the Act

As previously noted, the California policy is that a child receiving SSI benefits is not a "needy" child sufficient to qualify under the state standard of need. In this regard, Welfare and Institutions Code section 11203 states:

> "During such times as the federal government provides funds for the care of a needy relative

> with whom a *needy child or needy children are* living, aid to the child or children for any month includes aid to meet the needs of such relative, if money payments are made with respect to the child or children for that month, and if the relative is not receiving aid under Chapters 3 (commencing with Section 12000) or 5 (commencing with Section 13000) of this part or Part A of Title XVI of the Social Security Act for that month. Needy relatives under this chapter include only natural or adoptive parents, the spouse of a natural or adoptive parent, and other needy caretaker relatives." (Emphasis added.)

Further, Welfare and Institutions Code section 11250 provides, in pertinent part, that:

> "Aid, services, or both shall be granted under the provisions of this chapter, and subject to the regulations of the department, to families with related children under the age of 18 years, except as provided in Section 11253, *in need thereof* because they have been deprived of parental support or care due to . . . ." (Emphasis added.)

Additionally, Welfare and Institutions Code section 11251, in pertinent part, provides:

> "Aid and services shall also be provided under this chapter to or in behalf of any child under the age of 18, except as provided in this section, *who is in need* and lacks parental support and care and who: . . . ." (Emphasis added.)

Finally, Welfare and Institutions Code section 11450, subdivision (a), provides, in pertinent part, that:

> "For each needy family *which includes one or more needy children qualified for aid under* this chapter, there shall be paid, ..." (Emphasis added.)

EAS sections 44-205 and 44-206 were promulgated and designed to reflect this policy. (C.T. pp. 9-10.) EAS section 44-205.23 states that every family must include one child eligible for AFDC benefits. EAS section 44-206.11 states that an individual receiving SSI benefits must be excluded from the family before AFDC eligibility is determined. Thus, in California, a child receiving SSI is not "needy" under state standards.

The foregoing is the policy on the standard of "need" under the act as established in California. Since it has been shown that each state has the right to set such standards and that the standards as set were done so by properly enacted statutes as implemented by properly promulgated administrative regulations, nothing more is necessary to demonstrate that the California standards of "need" are consistent with the act.

Nevertheless, by way of additional explanation, the very fact that a child is in receipt of assistance under the SSI program establishes that such a child is not needy. The SSI program was specifically designed by Congress:

> "[T]o assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and who do not have sufficient income and resources to maintain a standard of living at the established Federal minimum income level. . . ." (20 C.F.R., § 416.110.)

In explicit recognition of the special needs of disabled children, Congress was determined to assure that the SSI program would include disabled children so that those children whose needs were not being adequately met by programs providing assistance to families would have their needs met. By recognizing the special needs of disabled children and by including those children in the 1972 legislation concerning the SSI program (Pub.L. No. 92-603, 86 Stat. 1329 (1972)), it is reasonable to assume that Congress designed the SSI program, in part, to meet the needs of disabled children and that it does in fact meet these needs.

In this connection, the legislative history of H.R. No. 1, the bill providing for the new SSI program, provides, in pertinent part:

> "It is your committee's belief that disabled children who live in low-income households are certainly among the most disadvantaged of all Americans and that they are deserving of special assistance in order to help them become self-supporting members of our society. Making it possible for disabled children to get benefits under this program, *if it is to their advantage*, rather than under the programs for families with children, would be appropriate because their needs are often greater than those of nondisabled children. The bill, accordingly, would include disabled children under the new program. U.S. Code, Cong. & Adm. News, 1972, Vol. 3, 92nd Cong., 2nd Sess., pp. 5133-5134." (Emphasis added.)

Although the "program for families with children" referred to by the legislative history was not enacted in the final

version of H.R. No. 1, the fact that Congress included disabled children in SSI, which was enacted, indicates its belief that the needs of disabled children would be adequately met by the SSI program.

Beyond the foregoing, the act itself specifically requires that petitioner take into consideration any income other than that received under the act in determining "need." In this regard, section 402, subdivision (a) (7), 42 United States Code section 602, subdivision (a) (7), states:

> "[E]xcept as may be otherwise provided in clause (8), provide that *the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children,* or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income, ..." (Emphasis added.)

It thus would not seem subject to serious dispute that California's policy which, in substance, states that an individual receiving SSI is not "needy" under the state standard is consistent with the act.

Petitioner submits that this is particularly the case in light of section 401 of the act, 42 United States Code section 601, which specifically provides that, in any event, assistance is provided only as far as the same is "practicable under the conditions in such state." Again, the United States Supreme Court has not lost sight of the significance of this section as the controlling theme of the entire act. In

Dandridge v. Williams, supra, 397 U.S. 471,this court upheld a Maryland statute which placed a maximum ceiling on a family's AFDC grant irrespective of size. In doing so, it noted at page 478 of its opinion that:

> "Congress was itself cognizant of the limitations on state resources from the very outset of the federal welfare program. The first section of the Act, 42 U.S.C. § 601 (1964 ed., Supp. IV), provides that the Act is
>
> > " 'For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, *as far as practicable under the conditions in such State,* to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection . . . . ' (Emphasis added.)
>
> "Thus the starting point of the statutory analysis must be a recognition that the federal law gives each State great latitude in dispensing its available funds."

Petitioner submits that California should be given that same substantial latitude in dispensing its available funds, California has special conditions of the nature anticipated in section 401 of the act, 42 United States Code section 601. It is no secret that California's proximity to the

Mexican border invites disadvantaged individuals from that country. (C.T. pp. 12-13.) Within this framework, the Legislature has determined that individuals receiving SSI are not "needy" children under the AFDC program which allows it to provide funds under that program to individuals who are obviously more in need of the same than someone already receiving assistance under SSI.

The policy is clearly consistent with the act and the trial court's conclusion that section 402, subdivision (a) (24) of the act, 42 United States Code section 602, subdivision (a) (24), specifically circumscribes the state's power to declare as not "needy" a child receiving SSI is simply incorrect. (C.T. pp. 392-393.) That section speaks solely to calculating the amount of benefits to a family unit which includes a child receiving SSI. It makes no mention or even alludes to the issue of whether the child receiving SSI is automatically deemed "needy" under the respective state standard of need.

Further, the trial court conceded that the issue was ambiguous (C.T. p. 392), and as noted above, *Burns v. Alcala, supra,* 420 U.S. 575, specifically held that a presumption of coverage is not created where the statute is ambiguous.

III

THE UNITED STATES DISTRICT COURTS UNPUBLISHED OPINIONS IN *McGRANAHAN v. WALEN* AND *UDELL v. PAGE* ARE NOT RELEVANT AND CONTROLLING HEREIN

On July 21, 1977, the United States District Court for the District of New Hampshire issued an injunction ordering the Commissioner of the New Hampshire Department of Health and Welfare and the Secretary of the United States Department of Health, Education, and

Welfare (HEW) (currently Department of Health and Human Services) to continue AFDC assistance to the plaintiff caretaker relative while her only son received SSI assistance. Similarly, a district court in Florida enjoined the denial of AFDC benefits to the plaintiff on the sole ground that her dependent child received SSI payment. (C.T. pp. 303-316.)

Those rulings are not binding or controlling on this court for at least two reasons. Initially, the decisions referred to are simply *unreported* federal district court opinions. Accordingly, the opinion is not entitled to significant deference in any event. This is particularly the case in light of the foregoing discussion which shows that the act contemplated assistance to the extent practicable under conditions in a specific state. The states of New Hampshire and Florida are substantially removed from California in terms of size, population, geography, and most significantly, the makeup and nature of their population.

Beyond the foregoing, the *McGranahan* case is distinguishable on purely legal grounds. In *McGranahan*, defendant HEW argued that the provisions of section 402, subdivision (a) (24), 42 United States Code section 602, subdivision (a) (24), rendered plaintiffs' children in that action not "dependent children" under section 406, subdivision (a) of the act, 42 United States Code section 606, subdivision (a), and therefore not eligible under the act. However, as set forth in detail above, it has always been the position of petitoner herein that in addition to meeting the federal definition of "dependent child," an individual also must be "needy" under state standards to establish eligibility. The disqualification herein is that the children are not "needy" and not that they are not "dependent children." Accordingly, while the fact situation herein is similar to that in *McGranahan*, an entirely

different legal issue is presented. Accordingly, the decision in *McGranahan* is totally irrelevant to the instant action.

Further, the *Udell* decision is not entitled to any deference since it relies almost entirely on Action Transmittal (AT) 77-45 which itself is not controlling as discussed below.

The clear point is that the two unreported district court decisions relied on by respondents are not entitled to any deference and the same is clearly not controlling.

IV

HEW'S INTERPRETATION OF SECTION 402, SUBDIVISION (a) (24) OF THE SOCIAL SECURITY ACT, IN PROGRAM INSTRUCTION AT 77-45 SHOULD NOT BE CONTROLLING IN THE PRESENT CONTROVERSY

On April 22, 1977, HEW issued a program instruction entitled AT 77-45 which interpreted section 402, subdivision (a) (24) of the act, to allow AFDC assistance for a caretaker relative when the only children in the home are receiving SSI assistance. (C.T. pp. 349-350.) The petitioner submits that AT 77-45 should not be controlling for the following three reasons, each of which standing alone is sufficient.

A. The Position of California Herein Does Not Rest Upon an Analysis of Section 402, Subdivision (a) (24) of the Act, 42 United States Code Section 602, Subdivision (a) (24)

As discussed above, the policy of the State of California at issue herein is not predicated upon an analysis of section 402, subdivision (a) (24) of the act, but rather on United States Supreme Court decisions interpreting the

act as a whole which specify that being a "needy" child under the states' standard is a condition of eligibility under the act. Accordingly, HEW's interpretation of said section is not germane to the dispute herein.

B. The State Is Not Bound in Any Event by AT 77-45

The HEW program instruction contained in AT 77-45 is not binding upon the states because of HEW's failure to adopt it as a regulation in accordance with the notice and hearing requirements of federal law. By not publishing its AT interpretation in the Federal Register or in the Code of Federal Regulations, HEW has failed to comply with the requirements of the federal Administrative Procedure Act as to the publication of substantive policies. (5 U.S.C., § 551 *et seq.*)

In the past, HEW has published regulations discussing income to be disregarded in determining eligibility for public assistance and the amount of the assistance payment. (See 45 C.F.R., § 233.20, subd. (a)(4).) The list of disregards includes coupon allotments under the Food Stamp Act, surplus commodities, educational grants and loans, and other specified items. The regulations make no mention of SSI funds. Ostensibly, the program instruction would add SSI assistance to the list of income to be disregarded in the eligibility determination. That such an addition should be published is certain, not only because of HEW's reversal of longstanding policy and regulations but also because of the impact on the rights, duties, and obligations of the states under the AFDC program. (Besides the obvious impact on eligibility, see additionally Revenue and Taxation Code sections 2205, 2206, 2206.5, 2207, 2209, and most significantly, 2231, and California Constitution, article XIIIB, section 6, relative to the state and county sharing of cost of the AFDC program.)

In addition to not complying with the Administrative Procedure Act, HEW has failed to comply with the Freedom of Information Act, 5 United States Code section 552, subdivision (a) (1) (D), and the decision in *Anderson v. Butz* (9th Cir. 1977) 550 F.2d 459, by not publishing its change of policy.

Beyond the foregoing, the petitioner received a letter from the HEW regional office dated July 31, 1979, which clearly states that AT 77-45 is an optional provision until regulations are developed to mandate its provisions. (C.T. pp. 351-352.) Hence, HEW itself has admitted that this program instruction is not binding on the states.

C. HEW's Interpretation of Section 402, Subdivision (a) (24), Contained in AT 77-45 Should Not Receive Deferential Treatment in Any Event

The interpretation of a statute by a federal agency charged with its enforcement has been considered a substantial factor to be considered in construing the statute. (*Youakim v. Miller* (1976) 425 U.S. 231, 235.) However, the validity or weight of such an interpretation will depend on the thoroughness evident in its consideration, the validity of its reasoning, and its consistency with earlier and later pronouncements. (*Skidmore v. Swift & Co.* (1944) 323 U.S. 134, 140.) In this regard, HEW's inconsistent posture on the issue of the effect of the receipt of SSI benefits on eligibility belies any present validity. Further, HEW's failure to comply with the notice and rule making requirements of federal law does not evidence a thorough consideration of the matter. When these factors are coupled with the fact that Congress did not expressly state that caretaker relatives of SSI recipients are eligible for AFDC benefits, it becomes apparent that AT 77-45 should not receive deferential treatment by this court.

V

ASSUMING, ARGUENDO, THAT THIS COURT SUSTAINED THE TRIAL COURT'S RULING RELATIVE TO PROSPECTIVE RELIEF TO THE CLASS, RETROACTIVE BENEFITS ARE NOT WARRANTED

Petitioner maintains strenuously that the foregoing should clearly convince this court that its position and policy herein should be sustained. In no event, however, should retroactive benefits be awarded herein.

In promulgating the policy being disputed before this court, the petitioner has acted in accordance with the directives of state law contained in sections 11203 and 11450 of the Welfare and Institutions Code. Under these circumstances, the petitioner submits that the rule allowing for the receipt of retroactive payments on the concept of debt articulated in *Bd. of Soc. Welfare v. County of L.A.* (1945) 27 Cal.2d 81, 86, should not apply.

In *Bd. of Soc. Welfare*, a state agency brought a mandamus proceeding to compel a local county agency to comply with the applicable provisions of the Welfare and Institutions Code. In allowing retroactive payments, one of the public policy justifications stated to justify such payments was to discourage government delays as a "money-saving device for the counties at the expense of those of our citizenry least able to bear the burden thereof." (P. 86.)

This justification for retroactive payments has no application to the petitioner in this case. The petitioner has acted in accordance with state law. Further, the petitioner is still acting in accordance with the federal authorities because of the optional impact of AT 77-45; there is no doubt that the federal authorities were in complete agreement with the petitioner before the issuance of the

action transmittal. Under these circumstances, it would be inaccurate to state that the petitioner has willfully acted erroneously or in a manner to create delays as a money-saving device. The petitioner submits that this court properly acknowledge these factors when it exercises its discretion as a court of equity in determining retroactive payments.

The petitioner also believes it is significant that Congress has given no indication that it deems retroactive payments necessary to protect the interests contained in the assistance programs. The only remedy it expressly contemplated was a prospective cutoff of funds.

In addition to the foregoing, from a practical standpoint, retroactive benefits are not appropriate herein. The petitioner has determined that an adverse ruling on the issue herein in terms of prospective benefits would cost approximately $16,276,500 in its first full year of operation with $13,663,900 going directly to the recipients and only $2,612,600 going to administrative costs. (C.T. pp. 355-357.) Petitioner at trial demonstrated that with respect to the issuance of retroactive benefits, the administrative costs are substantially higher. (R.T. pp. 25-27.) The point is that under the facts herein the cost to current recipients under the AFDC programs outweighs any good to be obtained from issuing retroactive funds.

The administrative problems of issuing retroactive benefits would be substantial if not impossible in some instances. Initially, petitioner would have no records prior to 1977. Secondly, with respect to cases decided in 1977 and hence, the cases relative to this particular issue would first have to be located. Thirdly, finding such records might not be conclusive because the person might have been disqualified for more than one reason. Conversely, in other cases, a reevaluation might be required since a given county might not have examined as to other requirements

of eligibility once it was determined that the only child or all children were receiving SSI. There, then, would be required the actual calculaton of benefits. Finally, all of the foregoing assumes the actual people in question once identified could be located physically and that they would cooperate with respect to all of the foregoing steps. (R.T. pp. 25-27.)

The point obviously is that California has only so much funds for the AFDC program as section 401 of the act, 42 United States Code section 601, and the United States Supreme Court anticipate and recognize. It would make no sense to tie up a disproportionately high amount of the same administratively with retroactive payments when said funds can be applied to the same group of people prospectively.

CONCLUSION

Petitioner respectfully urges that a hearing before this honorable court is necessary to resolve these important questions.

Respectfully submitted,

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THOMAS E. WARRINER, *Assistant Attorney General*
ANNE S. PRESSMAN,
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Attorneys for Petitioner

APPENDIX

CERTIFIED FOR PUBLICATION

In the Court of Appeal State of California

SECOND APPELLATE DISTRICT

DIVISION TWO

GEORGINA ZAPATA, ALFRED LONG, BAY AREA WELFARE RIGHTS ORGANIZATION, individually and on behalf of all others similarly situated,
Petitioner and Respondent,
v.
MARION WOODS, Director of the Department of Benefits Payments,
Respondent and Appellant.

EUNICE HOLMES, SELMA HASKINS, individually and on behalf of all others similarly situated,
Petitioner and Respondent,
v.
MARION WOODS, Director of the Department of Benefits Payments,
Respondent and Appellant

2D CIV. NO. 65139

(Super. Ct. No. CA000476 Consolidated with No. CA000548)

APPEAL from an order of the Superior Court of Los Angeles County. HARRY HUPP, Judge. Affirmed.

GEORGE DEUKMEJIAN, Attorney General, THOMAS E. WARRINER, Assistant Attorney General, ANNE S. PRESSMAN, JOHN H. SANDERS, Deputy Attorneys General, for Respondent and Appellant.

HUGH HARRISION, ESQ., Legal Aid Foundation of Los Angeles; HOWARD WATKINS, ESQ., Fresno-Merced Counties Legal Services for Petitioners and Respondents.

APPENDIX A

The facts pertinent to our disposition herein are not in dispute and may be summarized briefly as follows. In July of 1977, respondent Georgina Zapata applied for benefits under the Aid to Families with Dependent Children ("AFDC") welfare program. (Title IV-A of the Social Security Act of 1935, 42 U.S.C., § § 601 *et seq.* ("the Act.")) That application was denied by the Los Angeles County Department of Social Services and, after hearing, the denial was sustained by appellant on the ground that the only child in the family unit, Georgina's son, was already receiving assistance under the Supplemental Security Income for Aged, Blind and Disabled ("SSI") program. (Title XVI of the Act, 42 U.S.C., § § 1381 *et seq.*)[1]

Similar determinations were made by appellant respecting respondents Alfred Long, Eunice Holmes and Selma Haskins, except that in these cases AFDC aid was discontinued, upon a showing the dependent children of the parties started receiving SSI benefits.

Underlying appellant's decisions were the facts that (a) state law requires that in order to qualify for AFDC benefits each needy family must contain "one or more needy children qualified for aid" (Welf & Inst. Code, § 11450) and that (b) appellant's interpretation of this requirement, as reflected in its regulations, is that a child receiving SSI is not, i.e. cannot be, for purposes of the

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[1]As pointed out by respondents, both AFDC and SSI are cooperative federal-state cash benefit welfare programs (see Welf. & Inst. Code, § § 12000 *et seq.*); the first intended to aid needy families with dependent children, the second to assist needy aged, blind or disabled individuals, as defined, under specified circumstances.

While one might meet the eligibility requirements of each, federal law prohibits an *individual* from receiving moneys from both programs. (See 42 U.S.C., § 602(a) (24).)

state statute, a "needy child." (See Welf. & Inst. Code, § 11202). Put otherwise, it is appellant's position that if the only minor child in a family unit applies for and receives SSI, the child's parent or guardian is not entitled to benefits under the AFDC program as a "caretaker relative," such that disqualification of the child as an AFDC beneficiary likewise disqualifies the family unit.[2] (See fn. 1.)

That this is so, urges appellant, is manifested by certain decisions of the United States Supreme Court which make clear the question of need vis-a-vis the AFDC program is one to be resolved by the respective participating states. Thus, as was said in *Burns v. Alcala* (1975) 420 U.S. 575 at 578, "The Court has held that under § 402(a)(10) of the Social Security Act, 42 U.S.C., § 602(a)(10), federal participation in state AFDC programs is conditioned on the State's offering benefits to all persons who are eligible under federal standards. The State must provide benefits to all individuals who meet the federal definition of 'dependent child' *and who are 'needy' under state standards*, unless they are excluded or aid is made optional by another by another provision of the Act. *New York Dept. of Social Services v. Dublino*, 413 U.S. 405, 421-422 (1973); *Carleson v. Remillard*, 406 U.S. 598 (1972); *Townsend v. Swank*, 404 U.S. 282 (1971); *King v. Smith*, 392 U.S. 309 (1968). . . ." (Emphasis added.)

Respondents, on the other hand, maintain that the language used by the court in *Burns* cannot properly be

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[2]The same result would follow, of course, if more than one child is involved, so long as all the children were receiving SSI.

The term "caretaker relative," used in the briefs herein, is a shorthand expression for the "relative with whom any dependent child is living," a phrase of art referred to in 42 U.S.C., § 606, subd. (b) and defined in 42 U.S.C., § 606, subd. (c).

understood as applying to a situation where the federal legislation involved is itself dispositive, since under such circumstances a contrary posture of a state is violative of the supremacy clause of the United States Constitution. That this principle is at work under the facts present, respondents say, is evident from the provisions of 42 United States Code section 602(a) (24) to the effect that "[I]f an individual is receiving benefits under Title XVI [SSI], then, for the period for which such benefits are received, such individual shall not be regarded as a member of a family *for purposes of determining the amount of benefits of the family under this title [AFDC]* . . . ." (Emphasis added.)

The conflicting contentions of the parties were presented below by the filing by respondents on January 27, 1978, on their class action for declaratory and injunctive relief and for peremptory writs of mandate.[3] Following trial on July 9, 1980, the trial court in a soundly reasoned and well articulated memorandum of intended decision, which with minor deletions and the addition of footnotes we adopt hereinafter as our own, set out its rationale for the judgment in respondents' favor entered April 20, 1981, from which this appeal is taken.[4]

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[3]The action was certified as a class action on December 11, 1979, with the class consisting of "All persons in California who qualify under the Social Security Act as needy relatives with whom dependent children are living and who have been or will be denied AFDC benefits pursuant to Welfare and Institutions Code § 11203 and the Eligibility and Assistance Standards Provision of the Manual of Policy and Procedure § § 44-205 and 44-206, on the sole grounds that all of the dependent children in the relatives' care are receiving Supplemental Security Income."

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[4]The judgment provides in part that "The provisions of Welfare and Institutions Code § 11203 and the provisions [regulations] EAS § § 44-205 and 44-206 are inconsistent with and contravene

So, the trial court opined that:

"The principal substantive issue is whether federal statutes and regulations prevent the State of California from providing, as it does, that where the only minor dependent child or children in a family otherwise entitled to Aid to Families with Dependent Children (hereinafter "AFDC") are receiving Supplemental Security Income (hereinafter "SSI"), such family is ineligible for AFDC benefits.

"Welfare and Institutions Code section 11450(a) states that in order to qualify for AFDC benefits, there must be 'one or more needy children qualified for aid under this chapter.' The state contends that a child receiving SSI benefits is not a 'needy child' and has carried this determination into its regulation 44-206, the effect of

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(Footnote continued from previous page.)

the Social Security Act and are void and of no effect insofar as they deny AFDC benefits to the plaintiffs and members of the class. [¶]

Defendant/respondent, [appellant] [and] . . . those acting in his behalf, . . . or participating with him, . . . are hereby permanently enjoined from denying or terminating AFDC to members of the class on the sole ground that all dependent children in the family unit are receiving SSI, and are further permanently enjoined from enforcing or implementing Welfare and Institutions Code § 11203 and EAS §§ 44-205 and 44-206, or any other subsequent state statute, regulation or policy insofar as such statute, regulation or policy operates to deny or terminate AFDC to members of the class on the sole ground that all dependent children in the family unit are receiving SSI, so long as there is no change in applicable federal law to the contrary. [¶] The plaintiffs and those members of the class who either applied for AFDC and were denied or who were terminated from AFDC shall be entitled to the restoration of all AFDC benefits so unlawfully withheld or denied retroactively from January 27, 1975, or the date of their termination from, or applications for, AFDC, if later, provided that the defendant shall retain the discretion to deny or limit the amount of the grant on any other applicable ground not directly related to this lawsuit.

which is to categorically exclude from inclusion in the 'Family Budget Unit' a child receiving SSI. The state justified this holding with the reasoning that a child receiving SSI is not 'needy' and, therefore, cannot be used to qualify an otherwise eligible family for AFDC.

"Plaintiffs' attack the state's determination, contending that under federal law a child receiving SSI is necessarily 'needy' and, therefore, that the state is without power to provide to the contrary. Plaintiffs seek a ruling declaring invalid, as in conflict with federal law, section 11450(a) (insofar as it implies a contrary conclusion) and regulation 44-206, insofar as it excludes from the 'Family Budget Unit' a child who receives SSI. The issues are significant, involving by the state's estimate approximately 4,500 families who would otherwise be eligible for AFDC and approximately $16,000,000 per year of expenditures.

"California's principal defense is based upon its argument that, although a child receiving SSI is a 'dependent child' within the meaning of the federal government's AFDC statutes, nevertheless there is reserved to the states to determine whether such a child is 'needy.' The argument is that the state has determined that a child receiving SSI is not 'needy' so as to be counted in determining whether a family qualifies for AFDC.[5] The net result of the state's position is that where a family is eligible for AFDC contains only a child or children who are also eligible for SSI, the family must elect whether to accept the SSI

[5]Welf. & Inst. Code, § 11452 establishes a Minimum Basic Standard of Adequate Care (MBSAC) standard of need in dollar amounts. Testimony of appellant's witness was to the effect that in 1978 and 1979 the SSI grant figure for a child was less than the MBSAC for a two person budget entitling AFDC. In strictly monetary terms, therefor, respondents would have been eligible for some AFDC aid, even if the SSI benefit were taken into consideration.

benefits for the child or the AFDC benefits for the family, including the child.

"AFDC is a cooperative federal-state welfare program established in Title IV(a) of the Social Security Act, 42 USC § 601, *et. seq.* Under the program, federal and state sources of funds are used to provide aid to families who have dependent children. All states participate in the program. A basic concept of the program is that aid is provided not only for a child but to a family unit as described in the Act. Each state may provide its own eligibility requirements if consistent with federal law. Primarily, the program is used to provide welfare to split families where there is insufficient income to support the family unit. SSI (42 USC § 1381), on the other hand, is a program for aid to a handicapped child. It is funded by the federal government, although most states, including California, have a supplementary program. SSI is available to provide welfare for 'needy' handicapped children. The overlap which was the genesis of this lawsuit occurs where there is a child eligible for SSI in a family also eligible for AFDC. California agrees that a child in that situation is a 'dependent child' and, therefore, that requisite for eligibility under AFDC is satisfied. However, the state nevertheless contends that under Social Security law as interpreted by the U.S. Supreme Court, there is reserved to the states the power to determine the standards under which a child is 'needy.' It appears to the court that the state's contention in this regard is well-founded. The prime authority cited for this point is *Burns v. Alcala*, 420 U.S. 575 (1975). Therein the court said (in dealing with a different factual situation) at page 578:

> 'The Court has held that . . . federal participation in state AFDC programs is conditioned on the State's offering benefits to all persons eligible under federal standards. The State must provide

> benefits to all individuals who meet the federal definition of "dependent child" and who are "needy" under state standards, unless they are excluded or aid is made optional by another provision of the Act.'

"Other U.S. Supreme Court decisions asserting that the state may determine who is 'needy' are *King v. Smith*, 392 U.S. 309, 318-319 (1967), and *Dandridge v. Williams*, 397 U.S. 471, 478 (1969).

"Taking its clue from these cases, the State of California had determined that a child receiving benefits under SSI is not 'needy,' another requisite for AFDC eligibility. The court agrees with the essence of defendant's theory, that is, that a state may determine who is 'needy,' but believes that the state's power in this regard is subject to any limitations and qualification required by federal law. It is well established that a state participating in the AFDC program must meet the requirements of federal law. See *Burs v. Alcala, supra, King v. Smith, supra,* and *Rodriguez v. Vowell*, 472 F.2d 622, 624 (5 Cir., 1973), among other authorities.

"Accordingly, the state's power to determine whether or not a child receiving SSI is 'needy,' so as to qualify a family for AFDC, depends on whether federal law and regulation implementing that law circumscribe the state's power to declare as not 'needy' a child receiving SSI. It is necessary, therefore, to turn to federal statutory law and regulations interpreting that law.

"The principal statutory provision effecting [sic] this case is found in 42 USC § 602(a) (7) and (24). The pertinent statutory language appears to be as follows:

> '(a) A State plan for aid and services to needy families with children must . . . (7) . . . provide that the State agency shall, in determining need,

> take into consideration any other income and resources of any child or relative claiming aid to families with dependent children . . .' (24) provide that if an individual is reciving benefits under subchapter XVI of this chapter [SSI], then, for the period for which such benefits are received, such individuals shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this subchapter and his income and resources shall not be counted as income and resources of a family under this subchapter; . . .'

"It is noted that subsection (7) gives power and direction to the state to count the child's income in with the rest of the family's income to determine eligibility for the AFDC program. It must be determined whether subparagraph (24) of section 602 has the effect of qualifying the state's ability to declare that a child receiving SSI is not 'needy.' The court is of the opinion that subsection (24) is ambiguous in this respect, but that the better interpretation is that the state's ability to declare as 'not needy' a child receiving SSI is preempted by subsection (24). In essence, subsection (24) states that a child receiving SSI 'shall not be regarded as a member of the family for purposes of determining the amount of the benefits of the family.' In short, if there was a family unit of two (consisting of a 'caretaker relative,' usually an impecunious mother) and a dependent and needy child, the grant of benefits shall be limited to a family unit of one (that is, the 'caretaker relative'). The next clause seems determinative. It says that 'his (the SSI child recipient) income and recourses shall not be counted as income and resources of the family under this subchapter.' The state argues that the effect of the just-quoted phrase is merely to cause the amount of any SSI payment not to be counted as

income for determining eligibility, but has no effect on determining whether a child is 'needy.' Under the state's interpretation, the just-quoted phrase would only apply after there is first determined that there is an eligible AFDC family, which includes a 'needy child.'[6] Under the state's interpretation, therefore, the just-quoted clause only applies in determining the amount of any award under AFDC to an eligible family. However, it seems to the court that the more likely correct interpretation is that subsection (24) talks not only about calculation of the amount of an AFDC grant, but also about whether a child should be determined to be 'needy.' The latter interpretation is supported by HEW itself in two sources. First, in 1977, HEW published its own interpretation in 'Action Transmittal' AT-77-45, apparently a type of bulletin wherein HEW gives advise to state participants in the AFDC program. The 'Action Transmittal' expressly adopts plaintiff's interpretation, to wit, that subsection (24) only requires the amount of SSI to be deducted, but does not prevent the 'family unit' from qualifying for AFDC.

"The defendant points out that the so-called 'Action Transmittal' interpretation is not embodied in regulations and is, therefore, not binding on the state. Defendant concedes that a properly adopted federal regulation would be binding on California were there one adopted. In this respect it may be noted that the Department of HEW has given notice that it does intend to publish regulations making it clear that the only child or children's receipt of

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[6]We note in passing that in their brief, without reference to the record, respondents suggest appellant draws a distinction respecting AFDC benefits where the caretaker relative receives SSI, in that instance first including the caretaker in the family unit to determine eligibility, then excluding him or her to establish need and AFDC grant level.

SSI may not be taken to justify denial of AFDC (Exhibit C); however, the regulation has not yet been adopted. However, another regulation does affect the determination as to whether the federal government has occupied the field with respect to dependent children receiving SSI. Code of Federal Regulations, Title XXXXV, section 233.20(a), dealing with determination of need, affects the question. It provides in pertinent part as follows:

> 'A State Plan for . . . AFDC . . . must . . . provide that individuals receiving SSI benefits under Title XVI for the period for which such benefits are received, shall not be included in the AFDC assistance unit for purposes of determining need and the amount of assistance payment . . . [and must] specify a statewide standard, expressed in money amounts, to be used in determining (a) the need of the applicants and recipients and (b) the amount of the assistance payment.'

"Thus the regulations make it clear that HEW has taken the position that subparagraph (24) set forth earlier in this memorandum deals with the determination of need as well as the calculation of benefits. The regulations further make it clear that a need standard must be expressed in a dollar amount and not a categorical exception based upon a status (i.e., receipt of SSI).

"In addition, two federal trial court decisions, not published, bear on the question. They are *McGranahan v. Whalen*, No. 76-377 (District Court for the District of New Hampshire); and *Udell v. Page*, No. 78-849 (District Court for the Middle District of Florida). . . . . In each case, the district court held that section 602(a)(24) was to be construed as preventing a state from making a family ineligible for AFDC where the sole or only children in the

family were also receiving [SSI]. This court's decision is in accord with those federal court decisions.

"Accordingly, this court's determination is that, while accepting defendant's major premise that a state may determine the definition of a 'needy child,' the state may only do so where not otherwise limited by federal law. The court finds that the proper construction of federal law does, in the circumstances of this case, preclude the state from denying AFDC to families where the sole or only children also receive SSI.

"The result of this determination is that mandate must issue in the cases of the individual plaintiffs requiring a redetermination of the individual plaintiff's right to AFDC based upon the above holding. In the class action aspects of this case, the court contemplates that declaratory and injunctive relief will be necessary prospectively, and has stated to counsel its determination as to the extent to which back benefits may be recovered by members of the class." (See fn. 4.)

Having in this fashion provided the reasoning supporting our determination to affirm the trial court's judgment, we address further that portion of the latter requiring retroactive application only insofar as to observe it is clear to us from both statutory and decisional law that the named (see Welf. & Inst. Code, § 10961; *Bd. of Soc. Welfare v. County of L.A.* (1945) 27 Cal.2d 81, 85-86) and unnamed members of the class herein (see *Hypolite v. Carleson* (1975) 52 Cal.App.3d 566, 684) are entitled to such retroactive relief,[7] since " . . . [T]he provisions for

[7]Appellant's argument respecting retroactivity is framed categorically, without reference to any subsidiary contention the particular date selected in connection therewith, i.e., January 27, 1975, (see fn. 4) is inappropriate. That date is derived from the statute of limitation found in 42 U.S.C., § 1983, being three years prior to the date of the filing of respondent's action herein.

appeal to the . . . [State Department of Social Services] and for 'the payments, if awarded, to commence from the date the applicant was first entitled thereto' [see Welf. & Inst. Code, § 10961] likewise subserve a clear public purpose by securing to those entitled to aid the full payment thereof 'from the date . . . [they were] first entitled thereto' regardless of errors or delays by local authorities. It was the mandatory duty of the county to furnish aid according to the plan therefor which is laid down by the applicable provisons of the Welfare and Institutions Code. [Citations.] The obligation to pay became a debt due from the county to the applicant as of the date the latter was first entitled to receive the aid.

[Citations.]." (*Bd. of Soc. Welfare v. County of L.A., supra*, 27 Cal.2d 81 at pp. 85-86.)

The judgment appealed from is affirmed.

CERTIFIED FOR PUBLICATION.

_____, P.J.
ROTH

We concur:

_____, J.
COMPTON

_____, J.
GATES

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

MAR 15 1985

I have this day filed Order _____

HEARING DENIED

Mosk, Reynoso, Grodin, JJ. are of the opinion that the petition should be granted.

PETITION SHOULD BE GRANTED

In re 2 Civ No 65139
ZAPATA, LONG, ET AL

MARION WOODS

Respectfully

Clerk

27074-877 8-82 4M • OBP

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 3340 Ocean Park Boulevard, Suite 3005, Santa Monica, California 90405: that on June 10 1983, I served the within *Petition for Writ of Certiorari* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Monica, California, addressed as follows:

Hon. Michael Rodak, Clerk
United States Supreme Court
Supreme Court Building
1 First Street, N.E.
Washington, D.C. 20543
(40 copies via Airborne)

Byron J. Gross, Esq.
Legal Aid Foundation of Los Angeles
1550 W. Eighth Street
Los Angeles, California 90017

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 10, 1983 at Santa Monica, California.

KIRK W. HARNEY
(Original signed)

Los Angeles, Cal. MAR 7, 19 87

TITLE { Zapata, et al / Woods, etc } No. 65139

REMITTITUR ISSUED

CLAY ROBBINS, *Clerk*

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